

1 IN THE KENTUCKY PUBLIC SERVICE COMMISSION

2
3
4 IN RE: INVESTIGATION:

5 Case No. 2003-00433
6 AN ADJUSTMENT OF THE GAS AND ELECTRIC RATES,
7 TERMS, AND CONDITIONS OF LOUISVILLE GAS AND
8 ELECTRIC COMPANY

9 and

10 Case No. 2003-00434
11 AN ADJUSTMENT OF THE ELECTRIC RATES, TERMS, AND
12 CONDITIONS OF KENTUCKY UTILITIES COMPANY

13 * * *

14
15 SWORN STATEMENT

16 OF

17 DAVID C. BROWN

18 AUGUST 10, 2005

19
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2/15/05 [Signature]

A P P E A R A N C E S

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COMMISSION:

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1 The sworn statement of DAVID C. BROWN,
2 taken in the offices of Goldberg & Simpson,
3 3000 National City Tower, 101 South Fifth Street,
4 Louisville, Kentucky, on Wednesday, the 10th day of
5 August, 2005, at approximately 10:05 a.m.

6
7 EXAMINATION

8
9 BY MR. GOLDBERG:

10 Q. Would you state your name, please.

11 A. David C. Brown.

12 Q. All right, sir. And your business
13 address?

14 A. 1800 Aegon Center, 400 West Market,
15 Louisville, Kentucky.

16 Q. Okay. And your occupation?

17 A. I'm an attorney with Stites &
18 Harbison.

19 Q. Okay. And I presume the address you
20 gave me was the address of Stites & Harbison.

21 A. That's correct.

22 Q. Okay. And how long have you been a
23 lawyer?

24 A. Since 1964.

25 Q. Okay. You are familiar, I take it,

1 with the Public Service Commission?

2 A. Yes.

3 Q. Okay. And I take it you have
4 represented people in front of the Public Service
5 Commission before?

6 A. I have represented companies.

7 Q. Okay. Thank you. With regard to
8 that, did you have occasion to represent the Kroger
9 Company before the Public Service Commission related
10 to two rate cases filed in 2003?

11 A. Yes, I did.

12 Q. Okay. Tell me what you recall
13 generally prior to the actual filing of the case,
14 which I'm representing to be end of December 2003,
15 what your participation was.

16 A. I had none.

17 Q. Okay. When did you first become
18 involved in representing Kroger as it relates to the
19 rate cases? And let me further represent the rate
20 cases as being 00433 -- that's the LG&E rate case --
21 and 00434, the KU case.

22 A. I received a -- a call from the Kroger
23 Company sometime during the first of the year -- I
24 can't recall when -- asking if I would be available
25 to represent them in the case. I said yes.

1 Q. Okay. Had you represented Kroger
2 before?

3 A. I had not.

4 Q. Okay. Before the Public Service
5 Commission?

6 A. I had not.

7 Q. I trust you were retained then
8 sometime in the winter of 2004?

9 A. No. This was '05. '04, you're right.
10 I'm sorry. It would probably have been January,
11 maybe February.

12 Q. And for your reference, the dates,
13 timeframe-wise, or complaint is -- not complaint, rate
14 cases are filed late December 2003. First informal
15 conference is April 28, 2004. And the hearings occur
16 beginning May 4th, 5th, 6th and 12th.

17 A. Correct. I recall that.

18 Q. All right. Now, using that as a
19 timeframe, we've established when you were retained.
20 Tell me upon behalf of Kroger Company what you did
21 between the time you were retained and the first
22 informal conference, April 28, 2004.

23 A. We prepared data requests to the
24 companies seeking information that was relevant to
25 our position. Obviously reviewed data requests that

1 the commission asked. The usual types of things you
2 would do to prepare for a hearing. We -- we were a
3 minor player in the case. Kroger was a single issue
4 intervener. They were interested in a particular
5 aspect of the case and were not interested in
6 participating in a wholesale fashion.

7 Q. All right, sir. Did you provide any
8 expert testimony on a prefile basis?

9 A. We did. We filed testimony of an
10 expert and on two or three issues. And in that -- in
11 that timeframe we approached Mr. Riggs, who is
12 counsel for the utilities, about -- about our
13 interest -- Kroger's interest in the case which had
14 to do with a particular type of tariff they wanted to
15 talk to the company about. It was called a
16 time-of-use tariff. There was no such tariff on
17 file, and that conversation did take place. And
18 ultimately prior to April 28th, the company and
19 Kroger entered into or agreed to enter into a --
20 basically a stipulation or a settlement of the -- of
21 the case whereby Kroger would basically go away.

22 Q. Was the demand issue that you've
23 talked about, is that an issue related to revenue
24 requirement or an issue related to rate design, or do
25 those terms mean anything to you?

1 A. Rate design only.

2 Q. Okay. Does it deal with issues
3 related to use of electricity during certain periods
4 of the day?

5 A. Yes.

6 Q. Okay. Using our time line, April 28,
7 2004, as the first informal conference, am I
8 understanding that you were resolved -- "you" being
9 Kroger -- with issues related to the rate cases prior
10 to April 28, 2004?

11 A. I believe so. I believe that we
12 presented the commission at the prehearing conference
13 on the 28th with the fact that we had entered into a
14 stipulation and would present it to the commission
15 for approval during the rate case. Whether we had --
16 whether the parties had signed it, I'm not sure. But
17 I think we did present that to the commission.

18 Q. Okay. In between the filing of the
19 complaint and April 28, 2004, did you have
20 opportunity to communicate directly with any of the
21 staff of the Public Service Commission on the
22 particular case?

23 A. Yeah. I don't -- I don't recall any.
24 I don't get up there that much. I was not in a case
25 at the commission during that time. The only person

1 I would have communicated with would be Mr. Raff, and
2 I don't recall that I did.

3 Q. Okay. Do I take it, then, you had no
4 contact with any of the commission members during --

5 A. That's correct.

6 Q. -- that period of time?

7 A. That's correct.

8 Q. Okay. Have we discussed all activity
9 you had on these rate cases up until April 28, 2004,
10 that you recall?

11 A. Right. That's -- that's the sum and
12 substance of it. It was a normal preparation for a
13 rate case. And ultimately this particular party,
14 Kroger, agreed to withdraw its testimony. And the
15 companies agreed to introduce a time-of-use tariff on
16 an experimental basis.

17 Q. Okay. And all that was done prior to
18 April 28, 2004.

19 A. The agreement was made before that,
20 yes.

21 Q. Okay.

22 A. It was subject to commission approval.

23 Q. Of course. Did you have
24 communications with any of the members of KIUC prior
25 to April 28, 2004, that you recall?

1 A. Well, I had communication with Mike
2 Kurtz prior to April 28th on matters unrelated to
3 this case, and with respect to this case.

4 Q. Okay. Any other interveners other
5 than KIUC? Mr. Kurtz is counsel for KIUC.

6 A. Right. Mr. Riggs for the companies,
7 and I don't believe I spoke with anyone else.

8 Q. Fair enough. Did you come to the
9 commission, make an appearance on April 28, 2004?

10 A. I did.

11 Q. Okay. That was the informal
12 conference. Tell me what you recall of the informal
13 conference and that day's events.

14 A. The only thing I really recall was the
15 fact that I presented the stipulation -- the
16 agreement to make the stipulation to the commission.
17 I don't have a recollection -- and I have not
18 reviewed my notes. I don't have a recollection of
19 anything else. Generally there would be a review of
20 the cases and timeframes and discussion about how
21 long it would take and how much cross-examination
22 people had, et cetera.

23 Q. Okay. Do you have a recollection of
24 having had any discussions with any members of the
25 staff on that day?

1 A. I do not.

2 Q. Okay. And when you say you presented
3 your agreement with LG&E/KU, do I -- am I
4 understanding you took a written document and -- or
5 LG&E/KU took a written document and filed it at the
6 commission on that day?

7 A. I don't recall whether we filed
8 anything or not.

9 Q. Okay.

10 A. I know that Mr. Riggs and I advised
11 the commission. We may have had a stipulation in
12 draft form or in final form. But whatever it is,
13 it's on the record. And that's what I recall the --
14 my -- my part of the -- of the April 28th pretrial
15 conference. The stipulation was such that at that
16 point we would not be an active participant in the
17 case.

18 Q. All right, sir. I will represent to
19 you that on April 29th and April 30th -- and
20 April 30th is Oaks Day -- that there were discussions
21 between the interveners and LG&E and KU. Did you
22 participate in those discussions?

23 A. I did not.

24 Q. Okay. Did -- were you in
25 communication with LG&E and KU with regard to those

1 discussions on April 29th or April 30th?

2 A. I received a phone call from someone,
3 and I don't recall what day it was, but that there
4 had been a meeting between the attorney general, KIUC
5 and maybe the staff. And again, I haven't looked
6 back to see my notes, but I recall there was a --
7 there were settlement talks about the whole case, and
8 that my -- my recollection is that there was no
9 agreement reached, but there were some pretty solid
10 discussions.

11 Q. Okay. You have no recollection of who
12 actually called you to communicate that?

13 A. My guess was that -- my guess was --
14 is that it was Mike Kurtz, but I couldn't be for
15 sure.

16 Q. Did you have a recollection --

17 A. It could be Mr. Riggs.

18 Q. Okay. Could it have been Mr. Boehm?

19 A. No, I don't think so.

20 Q. Fair enough. And do you have a
21 recollection that you received the call prior to the
22 hearings that were scheduled the next week?

23 A. Oh, yes.

24 Q. Okay. And again, for reference
25 purposes, the first date of hearing was May the 4th,

1 which would have been Tuesday of the following week.
2 Do you have a recollection you received this phone
3 call prior to that?

4 A. Yes.

5 Q. Okay. Any other communications from
6 any of the parties that you recall, or the staff,
7 prior to May the 4th?

8 A. Yes. I'm sure I had discussions with
9 Mr. Kurtz probably on Monday following up the phone
10 call and trying to understand what was happening in
11 the case.

12 Q. Okay. Did you get any clearer
13 understanding on the 3rd?

14 A. I probably did, but I don't recall. I
15 mean, I knew going up there on Tuesday that there
16 were the possibilities of settlement. I didn't
17 know -- I don't recall knowing precisely what the
18 procedure was going to be when the case opened.

19 It was a type of situation where our
20 stipulation was not dependent on what the overall
21 case did. We had a separate, stand-alone stipulation
22 with the company, and we were going to present it and
23 not participate in the case.

24 Q. Okay.

25 A. So whether there was a settlement or

1 was not a settlement of the overall case was of
2 interest to me, but academically only.

3 Q. Other than your conversation with
4 Mr. Kurtz, did you have any other conversations with
5 any party or the staff prior to May the 4th, that you
6 recall?

7 A. I was at the racetrack on a Friday, I
8 think, and I got -- I recall talking to somebody. It
9 was either Mr. Kurtz --

10 Q. That would have been Friday,
11 April 30th, Oaks Day?

12 A. I think -- I think so, yes. It could
13 have been Thursday. I don't recall. I have a
14 recollection of wanting to call Richard Raff to find
15 out what was going to happen on Tuesday. I don't
16 recall whether I did or I didn't, but I very well
17 could have.

18 Q. All right.

19 A. If he says I did, I'm sure I did.

20 Q. Other than a possible call to Mr. Raff
21 and the conversation we've talked about, it sounds
22 like two conversations, one on -- sometime over the
23 weekend and one on Monday with Mr. Kurtz -- do you
24 recall any others?

25 A. I do not.

1 Q. Okay. May the 4th, first date of the
2 hearing. Tell me what you recall about the first day
3 of the hearing, May the 4th.

4 A. I recall being up at the commission
5 prior to the time of the -- of the hearing, and there
6 being discussion of -- of continuing settlements
7 among the parties. And I think I'm right on this.
8 Again, I have not gone back to check, but I believe
9 we opened the case and advised the commission -- I
10 say "we" -- Mr. Riggs, on behalf of the companies,
11 advised the commission that we'd like time -- that
12 they would like time to continue the settlement
13 discussions. This was after appearances were made,
14 and the commission granted that time. The parties
15 went back into the side room there together, and
16 there were discussions.

17 Q. Okay. When you said "side room,"
18 hearing room 2?

19 A. I think so.

20 Q. Okay.

21 A. It's right behind on the right as
22 you're facing the bench.

23 Q. All right. Were all parties, to your
24 knowledge, present during those discussions in
25 hearing room 2?

1 A. I don't recall. I know at one point
2 the Department of Defense lawyer was hooked in by
3 telephone, as I recall.

4 Q. Okay.

5 A. But whether all the parties were
6 there, I have no idea.

7 Q. Were you actively participating in the
8 discussions or merely there as an observer?

9 A. Mainly observing.

10 Q. Okay. Did you have an opportunity to
11 observe the staff and their participation in the
12 conversations of May the 4th?

13 A. They were there. And Mr. Raff was
14 there. And there was another person, and I don't
15 recall. It could have been Aaron Greenwell. I
16 don't --

17 Q. Do you know Mr. Isaac Scott?

18 A. Yes. It was Isaac Scott. It was not
19 Mr. Greenwell.

20 Q. Do you know Mr. Jeff Shaw?

21 A. No. I might recognize him, but the
22 name doesn't ...

23 Q. Fair enough. Okay. Did you have an
24 opportunity to observe the role the staff was playing
25 in these discussions?

1 A. Well, certainly I did. I mean, I was
2 there.

3 Q. Did you form an impression as to --

4 A. I don't have an impression about
5 particular roles. I -- I recall during the day --
6 and it was during the day -- the entire day, if not
7 into the evening -- that there were discussions in
8 the rooms by various parties, and there were
9 discussions outside the rooms by various parties with
10 respect to the issues. It was a normal type of
11 multiparty settlement discussions.

12 Q. Okay. Just for the record, your best
13 remembrance of this, who were the parties that were
14 collectively known as the interveners?

15 A. Well, Dennis Howard for the attorney
16 general.

17 Q. Was Ms. Blackford with him also?

18 A. I think so.

19 Q. Okay. Do you have a recollection
20 there were two persons from the attorney general's
21 staff?

22 A. I know both Betsy and Dennis, and I --
23 it sticks in my mind that Dennis was the primary
24 advocate, but I think they were both there most of
25 the time. Mr. Kurtz and Mr. Boehm for KIUC. There

1 were one or two consumer groups, one from Lexington
2 and a Legal Aid person from Louisville, whose names I
3 do not know. There were the -- there were counsel
4 for the steel company in Eastern Kentucky --

5 Q. North American Stainless?

6 A. Yes. North American Stainless had
7 several people there. The Department of Defense was
8 there. The environmental cabinet was there through
9 counsel. Mr. Riggs and several of his colleagues
10 were there for the company. I'm sure there were
11 others.

12 Q. Actually you got them all.

13 A. Okay. Good.

14 Q. The only one I think you didn't get --
15 you mentioned them before and I assume they were
16 there -- was the KIUC folks.

17 A. Yes, I mentioned them.

18 Q. Okay. What was your understanding
19 what KIUC was?

20 A. Well, I know KIUC is a consortium of
21 industrial customers that are interested in utility
22 matters.

23 Q. And they were represented by Mr. Boehm
24 and Mr. Kurtz?

25 A. That's correct.

1 Q. As it relates to David Brown, do you
2 recall any conversations with the staff on May the
3 4th?

4 A. Other than chitchat, good mornings,
5 no. I may have had some, but I don't recall that.

6 Q. All right. You mentioned North
7 American Stainless. Did you have a recollection or
8 understanding that their issues were being discussed
9 separately from the main group?

10 A. Well, I knew they had a particular
11 issue that did not apply to the other interveners
12 over and above the revenue requirements of the case.
13 Other than that, I don't have any recollection of it.

14 Q. Okay. Physically, do you have a sense
15 that they were in another room discussing their
16 issues different than the main group discussing rate
17 case issues?

18 A. Yes, I think so.

19 Q. Okay. And in your recollection, did
20 those discussions get reported back to the main group
21 during the course of time?

22 A. My recollection is that all
23 discussions were reported back to the main group.

24 Q. All right. Any other breakout groups,
25 if we can use that term, other than North American

1 Stainless that you recall?

2 A. Jon, I don't recall. I'm sure there
3 could have been, but I don't recall.

4 Q. Fair enough. Anything else you recall
5 about the events of May the 4th? That would have
6 been the first hearing date.

7 A. Other than the lateness of the hour,
8 not really. I remember it did go -- one of the days
9 went beyond dinnertime.

10 Q. All right. Focusing in on the first
11 day, did you have an understanding that all the
12 interveners had reached agreement by the end of the
13 day, May 4th, with LG&E and KU on all issues?

14 A. Either that day or the next.

15 Q. Okay. Let's deal with the next day,
16 May the 5th, also a date that was originally
17 scheduled for hearing.

18 A. Yes.

19 Q. Okay. Were you in attendance on May
20 the 5th?

21 A. I was.

22 Q. Okay. Take me through what you recall
23 of the second day of the hearings, the chain of
24 events.

25 A. The days run together. I do recall

1 leaving the commission offices on a night -- it may
2 have been the first day or the second day -- and that
3 all the parties had pretty much agreed to all the
4 issues. Whether that was the 4th or the 5th, I can't
5 recall. And I recall going up to Frankfort,
6 believing that we were going to work on the final
7 documents, final stipulation, and that there had been
8 agreement in principle by everyone.

9 And then I recall a phone call coming
10 in that morning from Mr. Howard who said, "There's a
11 problem," and that he was meeting with the attorney
12 general and that he did not have agreement or that he
13 did not think he would have agreement, which took us
14 by surprise.

15 Q. Do you remember that Mr. Howard was
16 present when he made that announcement or was he on
17 the phone?

18 A. I think he was -- I think the initial
19 indication came by telephone. And it was either a
20 telephone call made by Betsy or by Dennis, and I
21 can't recall which. And then subsequently he was --
22 he or she came to the office and confirmed that there
23 was no agreement.

24 Q. And when you say "the office," you
25 mean the Public Service Commission offices?

1 A. That's correct.

2 Q. So that I'm clear on this, your first
3 recollection was that there was an agreement and that
4 Mr. Howard was calling in to say that there was no
5 longer an agreement?

6 A. That's correct, basically.

7 Q. Okay. And that would have been the
8 first understanding that you had that the agreement
9 that had been reached was no longer being agreed to
10 by the attorney general.

11 A. Yes. And I can't recall whether the
12 agreement -- the disagreement or the -- the decision
13 not to agree was only revenue requirements or whether
14 it was all of the issues. It was not a disagreement
15 with the Kroger stipulation. That's all I can
16 remember.

17 Q. Okay. Let me see if I can refresh
18 your memory a little bit on this. Did you develop
19 sometime, either on May 4th, 5th or 6th, the
20 understanding that the attorney general was at issue
21 over revenue requirements related to electricity?

22 A. Yes. There was an agreement on the
23 revenue requirement. There is initial agreement with
24 respect to the revenue requirement of both LG&E and
25 KU.

1 Q. Okay. And when you learned that the
2 attorney general was no longer in agreement, did you
3 have an understanding that he was still in agreement
4 on all other issues, i.e., rate design, rate
5 allocation and revenue requirement as relates to gas?

6 A. Well, that's the way it came out, and
7 I can't recall initially whether he backed out of the
8 entire verbal agreement or just the revenue
9 requirement piece.

10 Q. Okay.

11 A. It could have been either.

12 Q. Were you surprised?

13 A. Yes.

14 Q. Okay. On that same day that you
15 learned, I presume Mr. Howard subsequently came to
16 the group at the Public Service Commission offices
17 and made the same representation, that there was no
18 longer an agreement?

19 A. That's correct, and that would have
20 been the second day. It wasn't the first day. It
21 could have been the third day, but I think it was the
22 second day.

23 Q. Do you have a recollection of the
24 attorney general coming to the Public Service
25 Commission offices?

1 A. Yes, I do.

2 Q. Okay. And what day would that have
3 been?

4 A. I think, Jon, it was the second day.

5 Q. Okay. And do you recall a private
6 conversation between the attorney general and some of
7 the parties dealing with the issue of agreement or
8 not agreement?

9 A. The attorney general being Mr. Stumbo
10 himself?

11 Q. Yes, mm-hmm.

12 A. No, I don't recall Mr. Stumbo having
13 any conversations with anyone.

14 Q. Okay.

15 A. I remember his sitting there and being
16 in attendance. I don't remember his talking to
17 anybody.

18 Q. Okay. Do you remember a press
19 conference that he held at the offices of the Public
20 Service Commission?

21 A. I remember hearing about it, but I did
22 not observe it.

23 Q. Fair enough. Okay. After the parties
24 learned the attorney general was not in agreement,
25 what course of action did the parties take?

1 A. Well, we advised -- we went back on
2 the record at some point and advised the commission.
3 And at some point then asked the commission for more
4 time to try to put the deal back together, the
5 discussions back together.

6 Q. Okay. It's my -- it's been my
7 understanding that there was testimony given on both
8 the 4th and the 5th on those days while negotiations
9 were also ongoing. Was that your recollection also?
10 And let me rephrase that, make it clear, that on both
11 of those days, in addition to negotiations, there was
12 also testimony taken by the Public Service
13 Commission.

14 A. Well, they certainly were on the
15 record. I don't recall whether a witness was put on
16 by the company or not.

17 Q. Okay.

18 A. I -- I don't recall that. I didn't
19 think that was the case.

20 Q. Okay. On either the 4th or the 5th,
21 first and second day?

22 A. I just don't recall that.

23 Q. Fair enough. Okay. Do you remember
24 anything else about the events of May the 5th, second
25 day?

1 A. Second day? Again, I believe it was a
2 long day, and the parties continued discussions. And
3 I know how the discussions came out, but I don't
4 recall much in between.

5 Q. Okay.

6 A. I certainly was there.

7 Q. Staff had the same role on the second
8 day as it did on the first day, as best you could
9 tell?

10 A. Yes.

11 Q. Okay. No difference?

12 A. No.

13 Q. Did you have any conversations on the
14 second day with any member of the staff other than
15 salutations?

16 A. Not that I recall other than hellos.

17 Q. All right. Third day, May the 6th,
18 were you in attendance?

19 A. I was.

20 Q. Okay. Do you have a recollection of
21 Mr. Raff on the record in the hearing room before the
22 commissioners making a statement that he had
23 overheard the attorney general in a radio address
24 alleging that ex parte, collusive and/or
25 inappropriate behavior had taken place as part of

1 these proceedings?

2 A. I do.

3 Q. Okay. Tell me what you recall
4 generally of that whole chain of events.

5 A. I -- I just remember -- and you say it
6 was the third day, and I accept that -- that there
7 was a statement by Mr. Raff, a rather vigorous
8 statement, that this accusation had been made, and he
9 was making a denial of that. And at some point the
10 commission asked all counsel whether there was any
11 collusion that they were aware of. And one by one we
12 went up and responded.

13 Q. Okay. You personally responded?

14 A. As I recall.

15 Q. Okay. Did you notice whether or not
16 the representatives of the attorney general
17 responded?

18 A. My -- my recollection is everybody
19 responded negatively --

20 Q. Okay.

21 A. -- including the attorney general.

22 Q. All right. When you say "negatively,"
23 that no ex parte, collusive or inappropriate behavior
24 had occurred.

25 A. That's correct.

1 Q. Okay. Anything else you remember
2 about May the 6th, the third day?

3 A. The third day? I recall Mr. Howard
4 being at some point, whether it was the second or the
5 first or the third day, somewhat embarrassed by the
6 turn of events. And my sense was that he clearly
7 felt that he had authority to agree to the terms
8 and -- and was somewhat upset that it turned out the
9 other way.

10 Q. Okay. And you don't remember which
11 day that was, but it was one of the three days --

12 A. I would guess it was the day that he
13 called in and said that he could not make the
14 agreement.

15 Q. Okay. Do you recall that the
16 agreement in question was an agreement as to
17 electricity revenue requirement?

18 A. The initial agreement?

19 Q. Yes.

20 A. Yes.

21 Q. Okay. And am I correct that the
22 initial agreement, as you knew it, was for
23 a \$105 million increase on the revenue requirement --

24 A. That sounds about right.

25 Q. Okay. Did you subsequently have an

1 understanding that the attorney general was proposing
2 something less than \$105 million?

3 A. Yes.

4 Q. Do you know what that number was?

5 A. I don't recall.

6 Q. Fair enough. Am I correct that the
7 end of May 6th, all the testimony had been put into
8 the record and the parties had come to as much
9 agreement as they were going to come to? Is that
10 your recollection of the events?

11 A. I recall that there was a period of
12 time -- I guess it was between the 6th and the final
13 day -- when testimony was taken between the attorney
14 general and the company on revenue requirements. I
15 don't recall exactly what transpired between that.
16 I'm not sure if that's your question, but I'm ...

17 Q. Let me focus this for you as best I
18 can --

19 A. Okay.

20 Q. -- because I'm dealing with it every
21 day.

22 May 4, 5 and 6, negotiation and
23 testimony is ongoing at the Public Service
24 Commission. No more testimony is put in the record,
25 as I understand it, after May the 6th. There is a

1 May 12th date when the parties are together,
2 statements are made on the record, a document is
3 presented, but there is no agreement on revenue
4 requirement. Is that -- on electricity, because of
5 the attorney general's position. Is that pretty much
6 the way you recollect it?

7 A. Yes. You refreshed my recollection.
8 It was the third day, then, that there was testimony
9 taken on revenue requirements. I was there at that
10 time. I was confused about the dates. And by that
11 time all the other interveners had withdrawn their
12 testimony and did not participate.

13 Q. Meaning they were in agreement --

14 A. Yes.

15 Q. -- on all terms?

16 A. It was simply a revenue requirement
17 that was being litigated between the attorney general
18 on the one hand and the utilities on the other.

19 Q. Fair enough.

20 A. I was thinking that was on the 12th,
21 but I stand corrected.

22 Q. Okay. Is that -- that does -- it is
23 consistent with your memory that all that occurred on
24 4, 5, and 6 and the 12th was not about taking
25 testimony?

1 A. Yes. And for the life of me, I can't
2 remember what the 12th was about now.

3 Q. My understanding from the others is it
4 simply was the agreement which had been reached on
5 all other issues, other than revenue requirements and
6 electricity, was submitted to the Public Service
7 Commission because it had to be approved, and
8 obviously the controversy was still ongoing as to
9 revenue requirement on electricity.

10 A. Yes.

11 Q. Okay. All right. Now, between -- so
12 that we have that whole week in focus, did you have
13 any conversations with the staff other than
14 salutations, hello, et cetera, on May 4, 5, 6 or 12?

15 A. I had no conversations on my own with
16 them. I do recall a breakout session with the
17 attorney general and with KIUC and with the staff, I
18 believe, Mr. Raff. And I don't recall whether that
19 was the second day or the third day on issues -- on
20 an issue.

21 Q. All right. Now, when you say
22 "breakout session," a settlement discussion in
23 hearing room 2, correct?

24 A. Actually, we went into another
25 conference room.

1 Q. Okay.

2 A. It was a smaller group, and I think it
3 was -- it was a meeting that the attorney general
4 wanted to -- had something to discuss, that both KIUC
5 and Kroger had some interest in.

6 Q. And was this subsequent to the report
7 that the attorney general was no longer in agreement
8 or --

9 A. Yes.

10 Q. -- before?

11 Okay. Subsequent.

12 A. Yes.

13 Q. All right.

14 A. It was -- it was the -- it was toward
15 the end of those discussions.

16 Q. Were those discussions reported to the
17 full group, I take it?

18 A. Yes.

19 Q. Okay.

20 A. I would say so.

21 Q. Other than that discussion, any other
22 discussions where you participated with the staff?

23 A. I don't recall being involved in any
24 discussions with the staff other than that one
25 conference.

1 Q. All right. And do I take it that at
2 no time have you ever discussed any of these rate
3 cases or any matters related to them with any member
4 of the commission?

5 A. That's correct.

6 Q. All right. June the 30th, the
7 commission issues its ruling, which is still not
8 final.

9 A. Right.

10 Q. Between May the 12th and June 30th,
11 did you have any discussions with any member of the
12 staff about the cases?

13 A. I don't believe so. I don't recall
14 any.

15 Q. And I take it also no discussion with
16 any member of the commission for that --

17 A. That's correct.

18 Q. -- period of time.

19 A. That's correct.

20 Q. Okay.

21 A. As far as I was concerned, it was a
22 done deal.

23 Q. Okay.

24 A. The Kroger stipulation had been
25 accepted. That was my interest.

1 Q. In your observation, because you were
2 there on all hearing days and the informal
3 conference, did you observe any conduct which you
4 thought was -- violated ex parte communication rules,
5 as you know them, or was collusive or inappropriate?

6 A. Absolutely not.

7 MR. GOLDBERG: Okay. Fair enough.
8 That's all I have, Mr. Brown.

9 THE WITNESS: Thank you.

10 MR. GOLDBERG: Thank you. Appreciate
11 it much.

12

13 (STATEMENT CONCLUDED AT 10:45 A.M.)

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1 STATE OF KENTUCKY)(
)(SS:
 2 COUNTY OF JEFFERSON)(
 3

4 I, ELLEN L. COULTER, Notary Public,
 5 State of Kentucky at Large, hereby certify that the
 6 foregoing sworn statement was taken at the time and
 7 place stated in the caption; that the appearances
 8 were as set forth in the caption; that prior to
 9 giving testimony the witness was first duly sworn by
 me; that said testimony was taken down by me in
 10 stenographic notes and thereafter reduced under my
 11 supervision to the foregoing typewritten pages and
 12 that said typewritten transcript is a true, accurate
 13 and complete record of my stenographic notes so
 14 taken.
 15

16 I further certify that I am not
 17 related by blood or marriage to any of the parties
 18 hereto and that I have no interest in the outcome of
 19 captioned case.
 20

21 My commission as Notary Public expires
 22 November 5, 2007.
 23

24 Given under my hand this the 22nd
 25 day of August, 2005, at Louisville,
 Kentucky.
 26



ELLEN L. COULTER
NOTARY PUBLIC

1 I, the undersigned, DAVID C. BROWN, do
2 hereby certify that I have read the foregoing sworn
3 statement, and that, to the best of my knowledge,
4 said sworn statement is true and accurate, with the
5 exception of the corrections, if any, listed on the
6 errata sheet.

7
8 

9 DAVID C. BROWN

10
11 Subscribed and sworn to before me this 30th
12 day of September, 2005.

13
14
15
16 
17 NOTARY PUBLIC

18
19 My commission expires February 9, 2007
20
21
22
23
24
25

COULTER REPORTING, LLC
101 EAST KENTUCKY STREET, SUITE 200
LOUISVILLE, KY 40203

ERRATA SHEET

NAME DAVID C. BROWN DATE OF DEPOSITION 8/10/05

After having read my deposition, I wish to make the following changes:

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